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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 I Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEW ORLEANS, LOUISIANA Date: MAR 10 2003

IN RE: Applicant: [redacted]

Application: Application for Advance Processing of Orphan Petition Pursuant to 8 C.F.R. § 204.3(c)

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The Director of the New Orleans, Louisiana office denied the Application for Advance Processing of Orphan Petition (Form I-600A) and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The application shall be denied.

The applicant filed the Form I-600A with the director on October 1, 2001. The applicant is a 59-year-old married citizen of the United States who, together with his spouse, is seeking to adopt a child from Guatemala.

The director denied the application pursuant to 8 C.F.R. § 204.3(h)(4) because the applicant failed to disclose prior arrests and/or convictions. The director also noted that the applicant failed to submit evidence of the termination of his first marriage as required by 8 C.F.R. § 204.3(c)(1)(iii).

On appeal, the applicant submits a statement.

Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), states that the Bureau of Citizenship and Immigration Services (Bureau), formerly the Immigration and Naturalization Service (INS), may approve a Form I-600A only if the Bureau is satisfied that the applicant will provide proper parental care to an adopted orphan.

The Form I-600A focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. This determination, based primarily on a home study report by an adoption agency, and a mandatory and confidential investigation of the applicant's background, is essential for the protection of the orphan. 8 C.F.R. § 204.3(a)(2).

The mandatory and confidential investigation of the applicant's background was conducted by a check of the applicant's fingerprints through the Federal Bureau of Investigation (FBI). This investigation revealed that the applicant had been arrested on several occasions from 1975 through 1996 for driving under the influence of alcohol and that he had been arrested on one occasion for indecent exposure. The Bureau received the applicant's rap sheet from the FBI in October 2001.

According to the director in his August 2, 2002 denial letter, the applicant and his spouse were interviewed on January 15, 2002 at which time the interviewing officer asked the applicant if he had ever been arrested, charged, indicted, or convicted of a crime, including any traffic violations. The director stated that the applicant responded "no" to the question and to several other questions relating to the applicant's arrest record even though the interviewing officer had the applicant's rap sheet. According to the director, the applicant's spouse became upset during the

[redacted]

interview while the applicant was being questioned about his arrest record and the applicant's spouse eventually left the interviewing room. At the conclusion of the interview, the applicant was issued a Form I-72 and requested to submit a new home study report that included information about the applicant's arrest record, documentary evidence of the disposition of each arrest, and documentation "from a competent authority indicating rehabilitation."

The director stated that the applicant called the interviewing officer the day after the interview and requested an in-person meeting. At this meeting, the applicant admitted to having been arrested on several occasions, and also admitted that he had not been truthful because he did not believe that his prior arrests and/or convictions had any bearing on his fitness as a parent. The applicant stated that he was a private person; that the arrests occurred over twenty years ago; and that his spouse did not know of the arrests. The applicant subsequently submitted the documentation requested by the interviewing officer, which included dispositions of each arrest, an addendum to the original home study report and a second home study report, and a psychological evaluation from Dr. Brian G. Murphy.

A review of the dispositions of each arrest revealed the following about the applicant's conviction record[1]:

1. Alaska - November 23, 1975 (for an arrest on the same day): Convicted of Operating a Motor Vehicle Intoxicated (OMVI) and sentenced to 5 days confinement, 5 days suspended, a $500 fine with the $250 of the fine suspended.

2. Alaska - March 15, 1977 (for an arrest on December 18, 1976): Convicted of OMVI and sentenced to 20 days confinement, 20 days suspended, and a $600 fine with $100 of the fine suspended on condition of good behavior for one year. The applicant's operator's license was limited for one year to driving to and from work and he was required to attend April OMVI classes.

3. Alaska - October 21, 1982 (for an arrest on February 21, 1982): Convicted of Driving While Intoxicated (DWI) and sentenced to 90 days confinement, 70 days suspended, and a fine of $600 with $250 of the fine suspended. The applicant's driver's license was revoked for three years. The applicant was also placed on probation through October 21, 1984, on the conditions that he have no similar violations for two years and comply with recommendations of alcohol screening within 48 working hours.

4. Alaska - November 18, 1983 (for an arrest on November 9, 1983): Convicted of DWI and sentenced to 30 days confinement, of which

[1] A review of the record also reveals that one charge of OMVI and the charge for indecent exposure were dismissed.

all but 4 days were suspended on the condition that the applicant have no similar violations for one year and comply with the recommendations on alcohol screening. The applicant's driver's license was revoked for 90 days.

5. Colorado - August 30, 1996: Convicted of Driving While Ability Impaired (DWAI) and sentenced to 30 days confinement of which 30 days were suspended, a fine of $250 of which $250 was suspended, probation for one year, and useful public service for 32 hours.

A review [redacted] evaluation of the applicant revealed that the applicant informed Dr. Murphy that he was seeking the evaluation because the Bureau was concerned about the applicant "receiving several DWI's [sic] while living in Alaska approximately 22 years ago. [redacted] also indicated that his opinions were based exclusively on information provided to him by the applicant.

Dr. Murphy concluded that the beneficiary was a man of superior intellect and that he was neither psychologically nor emotionally impaired. Regarding the specific issue of alcohol abuse, Dr. Murphy stated the following:

> It is obviously very troubling that [the applicant] has had no less than six DWI offenses. This occurred some 20 years ago . . . . The examiner would point out that the best predictor of the future as would relate to alcohol usage would be the past. In this instance, we have what has amounted to 20 years of sustained sobriety. It would be reasonable to suspect that such sobriety will continue over the long term.

A review of the addendum to the home study report as well as the second home study report, both of which were prepared by the same home study preparer, revealed that the applicant and his spouse continue to be recommended as adoptive parents. The home study preparer concluded that the applicant now lives a different lifestyle from his bachelor days and that he did not disclose his arrests to the Bureau because he did not believe that such incidents had any bearing on his desire to adopt a child. The home study preparer based her conclusions, in part, on Dr. Murphy's evaluation of the application.

The director denied the petition on August 2, 2002 for several reasons. First, the director found Dr. Murphy's evaluation troubling because it appeared that the applicant did not disclose his 1996 conviction to Dr. Murphy, as the evaluation stated that the applicant's last DWI occurred in the 1980s. The director found Dr. Murphy's conclusion that the applicant had been sober for 20 years to be based upon false information that the applicant supplied to the doctor.

Second, the director found it difficult to believe the applicant's statement that he did not think about his DWI arrests when questioned by the interviewing officer. According to the director, an arrest is an unpleasant experience that is not easily forgotten and that "it strains credibility to believe that seeing your rap sheet would not have jogged your memory." The director found the applicant's statements to the interviewing officer and to Dr. [redacted] be inconsistent.

Third, the director concluded that the applicant has not been rehabilitated because the applicant repeatedly denied that he had ever been arrested, even while under oath. The director noted that the absence of an arrest since 1996 does not mean that the applicant's behavior has changed, only that the applicant has not been arrested for the past six years.

Fourth, the director determined that the home study report was incomplete and unacceptable. The director found that the conclusions of the home study preparer were based upon inaccurate information because the preparer relied upon Dr. Murphy's evaluation. Additionally, the director stated that the home study report did not discuss the applicant's first marriage or the children of that marriage. The director noted that the home study report indicated that two children were born of the first marriage and that the applicant had one surviving child, but it did not discuss the death of the second child.

Fifth and finally, the director noted that the applicant did not disclose his prior marriage on the Form I-600A, nor did the applicant offer proof of his termination of any prior marriages.

On appeal, the petitioner provides a separate response to each of the director's allegations.

Regarding his failure to disclose prior arrests to the interviewing officer, even when asked directly about such incidents, the applicant states, in part, that:

> The arrests in question happened in the past and have no logical, personal, legal, or medical basis for determining my capabilities to be a good parent. I am a very private person. I take full responsibility for my actions professional and personal . . . . I do not want to make light of any of the past arrests. Nor should the INS try to portray me as a "jack the ripper" criminal . . . .

Regarding the omission of his 1996 conviction for DWI in Dr. Murphy's evaluation, the applicant states, in part, that:

> If the officer had asked, I would have told the officer that after I received [redacted] report, I noted the

> omission and called Dr. Murphy and told him about the [1996 DWI conviction] incident. I left it up to him if he thought a rewrite of the report was necessary. He indicated it was not . . . . Dr. Murphy based his opinion on accurate information - gathered in the initial session and subsequent phone conversations. Is the officer qualified to question his judgment/recommendation?

Regarding his failure to provide evidence of the termination of his first marriage and the home study preparer's failure to discuss his first marriage in the home study report, the applicant states that:

> My previous marriage was dissolved over twenty years ago. I do not see what bearing it has on my ability to be a parent. I did not see the question on the petition about previous marriage(s). And, I do not carry my divorce decree around in my briefcase for someone to ask me about it. I told the initial home study [preparer] about my previous marriage and it ended in divorce. I did not offer any more information on my previous marriage. It is my present marriage and partnership that wants to adopt.

Regarding the absence of information about the children from his first marriage, the applicant states that:

> The officer said that I did not discuss the loss of my child and it should be a very traumatic experience, and I should discuss it. The officer has no right, nor is the officer qualified to intimate how I should feel about the loss of my child and how I should act or discuss the event. Is it the INS's responsibility to practice psychology without the education and license? I will never discuss the loss of my child with a stranger, let alone the INS.

In conclusion, the applicant states that:

> The INS officer denied the petition going against the recommendations of two professionals, trained in evaluating people or marriages. The officer only spent less than one hour with me and/or my wife. The home study was conducted over several interviews and visits to our home. The psychological evaluation was conduct [sic] over 6 ½ hours of interviews and tests. The officer was not qualified to determine if I would be a good parent based on our meetings.

Additionally, the applicant submits a summary of his experiences with Bureau personnel during the processing of this application, which the applicant claims illustrates the unprofessionalism of

[redacted]

Bureau personnel at the New Orleans district office. However, as the Administrative Appeals Office does not have the authority to investigate or decide claims of unprofessional conduct by Bureau personnel, such evidence shall not be discussed further. *See* 8 C.F.R. § 103.1(f)(3)(iii).

Bureau regulations affirmatively require an applicant to disclose to the home study preparer and Bureau personnel any arrest and/or conviction early in the advance processing procedure. 8 C.F.R. § 204.3(e)(2)(v). Operating a Motor Vehicle Intoxicated (OMVI) and Driving While Intoxicated (DWI) are misdemeanor convictions under Alaska law. Section 28.35.030 of the Alaska Statute (AS 28.35.030). Driving While Ability Impaired (DWAI) is a misdemeanor conviction under Colorado law. Colo.Rev.Stat. § 42-4-1301. Bureau regulations require an applicant to show evidence of rehabilitation if the applicant has a history of substance abuse. This evidence includes, but is not limited to, a signed statement giving details including mitigating circumstances, if any, about each arrest and/or conviction. 8 C.F.R. § 204.3(e)(2)(iii)(C).

The director did not ask the applicant to provide a signed statement giving details including mitigating circumstances, if any, about each arrest and/or conviction. However, the applicant maintains on appeal, and has asserted throughout the processing of this application, that "[t]he arrests in question happened in the past and have no logical, personal, legal, or medical basis for determining my capabilities to be a good parent." Furthermore, the applicant asserts that the denial of the application goes against the recommendations of two professionals - Dr. Murphy and the home study preparer - and that the Bureau is not qualified to determine whether he would be a good parent.

Although section 204(d) of the Act, 8 U.S.C. § 1154(d), states that there must be a favorable home study in every case, the Bureau is not bound to follow the recommendations of the home study preparer. Similarly, the Bureau may use, in its discretion, statements submitted as expert opinions such as the recommendations of an appropriate licensed professional. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The Bureau must make an independent assessment of an applicant's fitness as an adoptive parent. 8 C.F.R. § 204.3(h)(2).

Here, the applicant has not provided a reasonable excuse for his failure to disclose his arrests and convictions, and has not sufficiently established that he has been rehabilitated in light of his convictions involving substance (alcohol) abuse.

The applicant's claim that two professionals have recommended him as an adoptive parent is both unpersuasive and disingenuous. Although both the home study preparer and Dr. Murphy found the applicant to be a fit parent despite his convictions, the Bureau questions the reliability of these recommendations.

Regarding the psychological evaluation, Dr. Murphy based his findings on facts provided to him by the applicant. In his evaluation, [redacted] stated that:

> [The applicant] told me that he actually received six DWI's. Three in the 1970's and then three more in the 1980's. This occurred . . . in Alaska . . . before he even met his wife . . . . He has had no encounters with legal authorities since the last DWI back in the 1980's . . . . In this instance, we have what has amounted to 20 years of sustained sobriety.

Obviously, [redacted] did not review the applicant's rap sheet or the dispositions of each arrest and conviction, as the evaluation does not mention the applicant's 1996 conviction for DWI in Colorado. The applicant claims on appeal that he discussed the 1996 arrest and conviction with [redacted] chose not to include it his report even when alerted to the omission by the applicant. However, the applicant does not present any documentary evidence to support his assertion, such as a letter from [redacted] Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the Bureau does not consider [redacted] evaluation persuasive evidence that the applicant has been rehabilitated. The applicant's 1996 conviction for driving while intoxicated was his sixth offense and certainly contradicts Dr. Murphy's assertion that the applicant has 20 years of sustained sobriety. Given that the applicant had five convictions for driving while intoxicated prior to the 1996 incident, this latest conviction must be considered in evaluating whether the applicant has been rehabilitated.

Regarding the second home study report, the home study preparer stated the following about the applicant's arrest history and his rehabilitation:

> After this home study had originally been completed, [the applicant] informed the social worker that his F.B.I. background check revealed he had a number of arrests, primarily taking place twenty to twenty seven years ago. [The applicant] reports that he did not tell his wife of his past history and arrests, nor did he tell this social worker during our first meetings. As a result of the clearance stated in the Louisiana criminal background check, [the applicant] was not directly asked if he had been previously arrested but he admits to omitting the information. He states his reasons for the omission were that he felt the incidents happened so long ago and he felt they were not applicable to this

adoption.

> [The applicant] reports that in 1975 while working on the construction of the Trans Alaskan Oil Pipeline, he was arrested three times (11/23/75, 9/13/76, 12/18/76). . . . After five years without any similar incident, [the applicant] was arrested in Anchorage, Alaska on 2/12/82 . . . . [The applicant] was arrested on 10/29/83 for indecent exposure . . . . Approximately thirteen years later, [the applicant] was arrested on 2/28/96 . . . . [The applicant] reports that he has not had any incidents since that time and has not driven intoxicated. He feels that the last arrest was "an anomaly" in that he had flown to Denver from New York and had several drinks on the plane . . . .
>
> [The applicant] reports that the incidents that took place in Alaska in the 1970's and early 1980's happened before he met and married [his spouse]. Since his introduction to [his spouse] (in 1984) and his subsequent marriage to [his spouse], he now lives a much different lifestyle than his bachelor days in Alaska . . . .

It is clear that the applicant knowingly concealed his arrest history to the home study preparer until the Bureau's receipt of the applicant's rap sheet forced him to reveal the events. When the applicant did discuss his arrests with the home study preparer, he failed to mention the November 1983 conviction for DWI. The second home study report is also not persuasive evidence of the applicant's rehabilitation. The home study preparer was not made aware of the totality of the applicant's prior arrests and convictions and sought to minimize their importance by claiming that the last conviction was simply "an anomaly." Furthermore, the home study preparer relied heavily on Dr. Murphy's evaluation in recommending the applicant as an adoptive parent and the Bureau has already determined that Dr. Murphy's evaluation is not persuasive evidence. For these reasons, the two recommendations by the home study preparer and Dr. Murphy are not considered reliable evidence of the applicant's rehabilitation.

Regarding the applicant's refusal to discuss his first marriage and children from that marriage, as well as to document the termination of his first marriage, the applicant does not present a compelling reason for refusing to discuss these issues or documenting the termination of his marriage. As previously stated, the purpose of the advance processing procedure is to determine the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. Although the Bureau does not expect an applicant to provide intimate details or feelings regarding a divorce or

death, the Bureau must be reasonably certain that neither event occurred as a result of abuse and/or violence and that neither event negatively impacts on the physical, mental, and emotional capabilities of an adoptive parent to properly parent an orphan. *See*. 8 C.F.R. §§ 204.3(e)(2)(i) and (iii). Thus, the home study preparer must address these issues in the home study report. Moreover, Bureau regulations require an applicant to provide both a copy of his marriage certificate to his current spouse as well as evidence of the legal termination of all previous marriages for both him and his spouse. 8 C.F.R. § 204.3(c)(1). The applicant's claim that "I do not carry my divorce decree around in my briefcase for someone to ask me about it" is inappropriate. The applicant must produce documentary evidence that his first marriage was legally terminated.

For the reasons discussed herein, the applicant has failed to establish that he is able to provide proper parental care to an adopted orphan. The applicant's convictions for driving under the influence, while serious, would not, in every case, be a bar to the approval of the application. An applicant must always honestly disclose any adverse aspects of his or her past, coupled with evidence of rehabilitation. In this case, rather, the application is denied pursuant to 8 C.F.R. § 204.3(h)(4) because the applicant failed to disclose information to the Bureau, the home study preparer and Dr. Murphy about his substance abuse problems and prior convictions, and there is insufficient evidence of his rehabilitation.

The applicant bears the burden of establishing eligibility for a benefit pursuant to section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met his burden of proof.

ORDER: The appeal is dismissed. The application is denied.